

SMITH COUNTY COURTHOUSE
TYLER, TEXAS 75702

Jack Skeen, Jr.
Criminal District Attorney
Smith County

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ID# 13752
mJ

September 25, 1991

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Opinion Committee

RQ-205

Ms. Madeleine Johnson
Chair - Opinion Committee
Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

RE: Opinion Request on behalf of the Smith County District Attorney's Office whose Asst. District Attorney serves as a Board member of the Smith County Bail Bond Board as required by Art. 2372p-3 Sec.5(b)(5).

Dear Opinion Committee:

The District Attorney or his designee if that person is an assistant district attorney is a statutorily mandated member of the County Bail Bond Board pursuant to Tex.Rev.Civ.Stat.art 2372p-3 Sec.5(b)(5). The requestor clearly has an official interest in the subject matter involved.

The complete statement of facts is as follows: Effective December 1, 1989, the Smith County Bail Bond Board amended its rules and regulations to add among other provisions Rule B 11 (c) which reads in its entirety as follows:

(c) "All original applicants shall deposit with the County Treasurer of Smith County, Texas, cashier's checks, certificates of deposit, cash or cash equivalents to secure payment of any obligations incurred by an original applicant in the bonding business. Original applicants may not execute in trust to the board deeds of real property."

Since December 1, 1989, the Smith County Bail Bond Board has not permitted new applicants for bail bond licenses to execute in trust to the board deeds to real property but have only permitted cashier's checks, certificates of deposit, cash or cash equivalents to secure payment of any obligations incurred by new applicants in the bonding business. Additionally, this rule has been interpreted and applied by the Smith County Bail Bond Board to require those applicants who are seeking to renew bail bond

licenses to secure payment of any obligations relating to the bail bond business to post as security only cashier's checks, certificates of deposit, etc. and have not permitted any deeds of trust relating to nonexempt real estate to secure such obligations.

The County Bail Bond Board is granted broad general rule-making power in Art. 2372p-3 Sec. 5(f)(1) which currently reads as follows:

(f) In addition to the powers and duties given to the County Bail Bond Board by this Act, the board has the following powers and duties:

(1) To exercise any powers incidental or necessary to the administration of this Act, to supervise and regulate all phases of the bonding business (Emphasis mine) and enforce this Act within the county, and to prescribe and post any rules necessary to implement this Act;

Additionally, Section 6(a) of the Bail Bond Act requires a person desiring to act as a bondsman to file a sworn application for a license, setting forth, among other things, (4) a statement listing any nonexempt real estate owned by the applicant that the applicant intends to convey in trust to the board to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted....

Section 6(e) of the Bail Bond Act requires a hearing to be held on the application after the board conducts the inquiries required by Subsection (d)...and...If, after the hearing, the board is satisfied that no grounds exist on which to refuse the application, the board shall enter an order tentatively approving the application subject to the application being perfected by the filing of the security deposits required of licensees under this Act (Emphasis mine).

Under Section 6(f), when an applicant is notified from the board that his application has been tentatively approved, the applicant shall then (1) deposit with the county treasurer of the county in which the license is to be issued a cashier's check, certificate of deposit, cash, or cash equivalent in the amount indicated by the applicant under Subsection 5 of Subsection (a) of Section 6 of the Act to be held in a special fund to be called the bail security fund; or execute in trust to the board deeds to the property listed by the applicant under subdivision (4) of Subsection (a) of Section 6 of the Act....

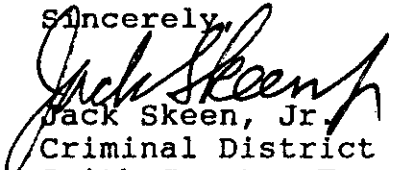
Please address the following:

1. Whether Rule B 11 (C) of the Smith County Bail Bond Rules and Regulations, as amended, is valid or invalid as imposing a restriction inconsistent with statutory provisions?

2. Whether the Smith County Bail Bond Board, if required to permit applicants to execute deeds in trust to the board as part of the statutorily required security, may require that a certain percentage of the allowable security be in the form of cashier's checks, certificates of deposit, or other cash equivalents?

Please construe the letter directed to the Smith County Bail Bond Board dated September 24, 1991, by assistant district attorney Richard B. Patteson as the necessary brief in this instance.

Sincerely,


Jack Skeen, Jr.
Criminal District Attorney
Smith County, Texas

Jack Skeen, Jr.
Criminal District Attorney
Smith County

September 24, 1991



SMITH COUNTY BAIL BOND BOARD

RE: Whether Rule B 11(c) of the Rules and Regulations of the Smith County Bail Bond Board, as amended, is valid or invalid as imposing a restriction inconsistent with statutory provisions.

Tex.Rev.Civ.Stat.art 2372p-3 was enacted for the purpose of licensing and regulating bail bondsmen. Section 5(a) creates county bail bond boards in certain counties. Under sections 5(f)(1) and 5(f)(2) of the statute, the board is empowered to supervise and regulate all phases of the bonding business and enforce the Bail Bond Act within its county and to "issue licenses to those applicants who qualify under the terms of" the act, to refuse licenses to those applicants who do not qualify, and to suspend or revoke the licenses of licensees who commit violations under the Act or the rules prescribed by the board under the Act.

Rule b 11(c) of the Smith County Bail Bond Board, as amended, requires that all original applicants shall deposit with the county Treasurer of Smith County, Texas, cashier's checks, certificates of deposit, cash, or cash equivalents to secure payment of any obligations incurred by an original applicant in the bonding business. Original applicants, according to the rule as amended, may not execute in trust to the board deeds of real property.

Section 6(a) of the statute requires a person desiring to act as a bondsman to file a sworn application for a license, setting forth, among other things, (4) a statement listing any nonexempt real estate owned by the applicant that the applicant intends to convey in trust to the board to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted...and (5) a statement indicating the amount of cash or cash value of any certificate of deposit or cashier's checks which the applicant intends to place on deposit with the county treasurer to secure payment of any obligation incurred by the applicant in the bonding business if the license is granted.

Under section 6(f), when an applicant is notified from the board that his application has been tentatively approved, the applicant shall then (1) deposit with the county treasurer of the county in which the license is to be issued a cashier's

check, certificate of deposit, cash, or cash equivalent in the amount indicated by the applicant under Subsection 5 of Subsection (a) of Section 6 of the Act to be held in a special fund to be called the bail security fund; or execute in trust to the board deeds to the property listed by the applicant under subdivision (4) of Subsection (a) of Section 6 of the Act, which property shall be valued in the amount indicated on an appraisal by a real estate appraiser by a real estate appraiser...the condition of the trust being that the property may be sold to satisfy any final judgment forfeitures that may be made in bonds on which the licensee is surety after such notice and upon such conditions as are required by the Code of Criminal Procedure, as amended, in bond forfeiture cases; the board shall file the deeds of trust in the records of each county in which the property is located, and the applicant shall pay the filing fees.

The principle is solidly established that the rules promulgated by an administrative agency are valid if they are constitutional, within the granted power, and adopted in accordance with proper procedure. See Land v. State, 581 S.W.2d 672, 673 (Tex.Cr.App.1979); 2 Tex.Jur.3d Administrative Law Sec. 16 (1979).

Another very solid proposition, at least under Texas law, is that rules and regulations adopted by administrative agencies may not impose additional burdens, conditions or restrictions in excess of or inconsistent with statutory provisions. Johnson v. Fireman's Ins. Co. of Newark, New Jersey, 398 S.W.2d 318, 320 (Tex.Civ.App.-Eastland 1965, no writ); Kelly v. Industrial Accident Board, 358 S.W.2d 874, 876 (Tex.Civ.App.-Austin 1962, writ ref'd)

The rule-making power delegated to the board under the statute is a broad power to supervise and regulate all phases of the bonding business and enforce the Bail Bond Act and to "issue licenses to those applicants who qualify under the terms of the act..."

There is no language granting power to make rules relating to the qualifications which must be met by applicants for licenses. A reasonable interpretation of the statutory language supports the conclusion that no such power may be implied. There is granted in Section 5(f)(2) authority to conduct hearings and investigations and make determinations respecting the issuance...of licenses...within the provisions of this Act..." The grant of power to conduct hearings and make determinations is a grant of adjudicative power as distinguished from a grant of power to impose additional qualifications as a prerequisite to obtaining a license.

The legislature has carefully set out the requirements which must be met by applicants for bail bond licenses. The restriction imposed by Smith County Bail Bond Board Rule B 11(c)

appears to be a restriction in addition to those expressed in the statute.

The function of the Bail Bond Board is to administer the statute, not to amend it, at least in the absence of statutory language indicating a legislative intent that the board should have the power to add to the qualifications enumerated by the legislature. I recommend that the Smith County Bail Bond Board seek an Attorney General Opinion regarding this issue.

Sincerely,


Richard B. Patteson
Asst. District Attorney